FOR ARGUMENT

In The

Supreme Court of the United States

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Nos. 76-1121, 76-1153 and 76-1162

No. 76-1121

AMERICAN BROADCASTING COMPANIES, INC., CBS INC. and NATIONAL BROADCASTING COMPANY, INC.,

Petitioners,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,

Respondent.

No. 76-1153

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,

Petitioner,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,

Respondent.

No. 76-1162

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,

Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

Reply Brief for Petitioners American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc.

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No. 76-1153

Association of Motion Picture and Television Producers, Inc.,
Petitioner,

vs.

Writers Guild of America, West, Inc.,
Respondent.

No. 76-1162

National Labor Relations Board,
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Reply Brief for Petitioners American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc.

I.

THE GUILD'S MOTIVE OR OBJECT IN IMPOSING DISCIPLINE IS IRRELEVANT.

The Guild argues that its coercive conduct of threatening, disciplining and blacklisting the supervisor-members falls outside the proscription of § 8(b)(1)(B) because the only reason or object of the Guild was to achieve strike solidarity and was not to punish the supervisor-members for the exercise of grievance resolving or collective bargaining functions. Under the Act, however, the Guild's subjective intention is irrelevant; it is the coercive conduct itself and its actual or foreseeable consequences which determines liability. *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.),* 216 N.L.R.B. 903 (1975); *New York Typographical Union No. 6 (Triangle Publications, Inc.),* 216 N.L.R.B. 896 (1975). These Board cases are fully in accord with this Court's decisions that, whatever the degree of motive required as an element of an unfair labor practice, it is fully supplied in this case by "application of the common-law rule that a man is held to intend the foreseeable consequences of his conduct." *Radio Officers' Union v. Labor Board,* 347 U.S. 17, 45 (1954). *Accord, Labor Board v. Erie Resistor Corp.,* 373 U.S. 221, 228 (1963), *Teamsters Local v. Labor Board,* 365 U.S. 667, 675 (1961).

Moreover, not only has the Board determined that subjective motive is irrelevant in § 8(b)(1)(B) cases, but this Court has made similar holdings with respect to other Section 8 offenses, which, like § 8(b)(1)(B), involve restraint and coercion. For example, in *I.L.G.W.U. v. NLRB,* 366 U.S. 731 (1961), the Court upheld the Board's finding of § 8(a)(1) and § 8(a)(2) violations on the part of a company which had bargained with a union that did not represent a majority of its employees, despite the company's good faith belief to the contrary. The Court stated:

> "We find nothing in the statutory language prescribing *scienter* as an element of the unfair labor practices here involved." 366 U.S. at 739.

Similarly, in *NLRB v. Burnup and Sims, Inc.,* 379 U.S. 21 (1964), the Court held that an employer violated Section 8(a)(1) for discharging employees engaged in union activity, despite the employer's good faith and objectively reasonable belief that the employees had threatened to dynamite his plant.

Thus, the only possible relevant inquiry concerning the Guild's motive is whether the Guild's campaign of coercive conduct was likely as a matter of fact to have the foreseeable result of adversely affecting the supervisor-members in the performance of their collective bargaining and grievance adjusting functions. The Board's determination that the Guild's conduct would likely have this adverse effect is both supported by the record and is logical as is demonstrated *infra,* at pp. 4-8.

Finally, the Guild's argument regarding its intent is totally inconsistent with the Court's approach to § 8(b)(1)(B) in *Florida Power & Light Co. v. I.B.E.W., Local 641,* 417 U.S. 790 (1974). The Guild's asserted reason for the discipline it imposed — strike solidarity — is the natural and typical reason that would be given by virtually any union which disciplines supervisor-members who work behind a picket line, including the unions involved in *Florida Power.* This Court would have had no need to make the careful distinction it did between the types of work performed by supervisors during a strike if the intent of the unions had been a relevant or controlling factor. Hence, it is submitted that the Guild's mental state is clearly not relevant in coercion cases. Accordingly, the intention, purpose or motive of the Guild's conduct has no bearing on the instant cases.

II.

THE BOARD'S DETERMINATION THAT THE GUILD'S CONDUCT MAY ADVERSELY AFFECT THE SUPERVISOR-MEMBERS' PERFORMANCE AS GRIEVANCE ADJUSTERS AND COLLECTIVE BARGAINERS IS SOUNDLY SUPPORTED BY THE EVIDENCE AND BY LOGIC.

The Guild argues that because there "was not evidence of an intent on the Guild's part to affect the employers' selection of Section 8(b)(1)(B) representatives," and because there was "no evidence concerning an adverse effect" of the Guild's conduct upon the supervisor-members' performance of their grievance adjusting and collective bargaining functions during the strike, there was thus no evidence from which the Board could conclude that the Guild's coercive conduct would adversely affect the supervisor-members' future performance of their grievance adjusting and collective bargaining functions. (Guild's Brief at 22.) The Guild then surmises that the reason for the lack of evidence is that the case was tried prior to *Florida Power*.

It is submitted that the Guild's arguments miss entirely the issue raised by *Florida Power*. In *Florida Power*, the Court clearly stated that union discipline of a supervisor-member can constitute a violation of § 8(b)(1)(B) when that discipline "*may* adversely affect" the supervisor-members' performance as grievance adjusters and collective bargainers. 417 U.S. at 804 (emphasis supplied.) In the instant cases, the Board found that the Guild's entire course of conduct, from its strike rules to its threats to its trials, fines and blacklisting was likely to — that is, "may" — affect the supervisor-members' performance of their grievance adjusting and collective bargaining duties in the future. Where, as in the instant cases, the legal test for determining the existence of a violation is the *probable* effect on future behavior —

here, the future performance of grievance adjusting and collective bargaining — there can be no *specific* evidence of the exact probability or the exact effect. *Florida Power's* adverse effect test does not require the Board to be able to predict with certainty that the Guild's conduct will adversely affect supervisor-members as grievance adjusters or collective bargainers; nor does it require the Board to be able precisely to predict the actual effect of the Guild's conduct on the supervisor-members' future performance of their grievance adjusting and collective bargaining duties. Thus, to require as the Guild now urges, that the record contain specific evidence of what the supervisor-members' future conduct is *certain* to be requires an evidentiary showing that is impossible and one which is clearly not required by *Florida Power*.

To the contrary, this Court has long recognized that,

> ". . . the statutory plan for an adversary proceeding 'does not go beyond the necessity for the production of evidential facts, however, and compel evidence as to the results which may flow from such facts . . . . An administrative agency with power after hearings to determine on the evidence in adversary proceedings whether violations of statutory commands have occurred may infer within the limits of the inquiry from the proven facts such conclusions as reasonably may be based upon the facts proven. One of the purposes which lead to the creation of such boards is to have decisions based upon evidential facts under the particular statute made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration . . . .'" *Radio Officers' Union v. Labor Board, supra,* at 48-49, quoting in part, *Republic Aviation Corp. v. Labor Board*, 324 U.S. 793, 798-800 (1945).

In the instant cases the Board properly performed its statutory function. To the clear evidential facts it applied its expertise and experience. It determined, consistent with the standard in *Florida Power*, that the Guild's discipline of the supervisor-members may adversely affect their future performance as grievance adjusters and collective bargainers. That this finding is based in part on the Board's understanding of human experience does not, as the Guild contends, demonstrate a lack of an evidentiary basis for "it is permissible to draw on experience in factual inquiries." *Radio Officers' Union v. Labor Board, supra,* at 49. *Accord, Teamsters Local v. Labor Board, supra,* at 675 (1961); *Labor Board v. Erie Resistor Corp., supra,* at 227.

The Guild argues that it is illogical and "[c]ontrary to common sense" to believe that the Guild's course of conduct may have an adverse carry-over effect on the supervisor-members' performance of their grievance adjusting and collective bargaining functions. (Guild's Brief at 29.)

To the contrary, it is evident that the logical, indeed almost inescapable conclusion, is that a supervisor-member vested with grievance adjusting or collective bargaining authority*, having once been subjected to the Guild's sweeping *in terrorem* tactics as a result of merely performing his normal supervisory duties would, with good cause, tread very cautiously in performing his supervisory duties including grievance adjusting and collective bargaining in the future. Indeed, the exercise of these normal supervisory duties such as hiring, firing, assigning work and credits, and directing employees is the primary and routine source of employee grievances. These management actions, and the individual supervisor-members herein who are responsible for them, are inextricably intertwined with the grievance adjusting process. The disciplined supervisor-member is thus very likely to conform his future conduct as a grievance adjuster or collective bargainer to what he believes the Guild desires at the time because, if he does not, he can be severely punished. Such behavior is reasonably to be expected from a reasonable person. What does defy common sense and human experience, however, is the arbitrary inference the Guild would have this Court draw in order to fit these cases within *Florida Power's* narrow holding that union discipline of supervisor-members who are *strikebreakers* is not prohibited by § 8(b)(1)(B). This inference is that a supervisor-member who has been instructed by the Networks not to perform rank-and-file struck work, who has not performed rank-and-file struck work, and who has not been charged with a violation of any of the Guild's strike rules prohibiting the performance of struck work, would somehow reasonably believe that he in fact was disciplined, or in the future would only be disciplined, for performing rank-and-file struck work.

* The Guild's argument that not all the supervisor-members adjusted grievances of Guild members or collectively bargained with the Guild is without merit. Clearly, the Board found the supervisor-members to be § 8(b)(1)(B) representatives and this finding is well supported by the record. Networks' Brief at 31-37. Moreover, supervisor-members have authority to and do in fact adjust grievances of Guild members. *Id.* at 32-34.

III.

THE NETWORKS WERE RESTRAINED AND COERCED IN THE SELECTION OF THEIR § 8(b)(1)(B) REPRESENTATIVES.

Amicus argues that even assuming the Guild's discipline of supervisor-members did adversely affect their performance as grievance adjusters and collective bargainers, § 8(b)(1)(B) would not be violated because the employer's *selection* of his representative for the purposes of adjusting grievances or collective bargaining would not be restrained or coerced. (Amicus Brief at 19-20.) Thus, amicus argues that the only effect of the

union sanctions would be on the *manner* in which the supervisor-members performed their grievance adjusting and collective bargaining duties. This argument is without merit and should be rejected.

As amicus recognizes, this Court now would have to conclude that *San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.)*, 172 N.L.R.B. 2173 (1968), was incorrectly decided. (Amicus Brief at 19-20.) The Court refused to do this in *Florida Power* and assumed that *Oakland Mailers* remained good law. 417 U.S. at 805. In *Oakland Mailers* and subsequently*, the Board has consistently held that § 8(b)(1)(B) is violated when a union disciplines supervisor-members vested with grievance adjusting and collective bargaining authority for the manner in which they perform their supervisory duties. The Board has long recognized that the ability of a union to dictate to a supervisor the manner in which he exercises his grievance adjusting or collective bargaining authority totally undermines and negates both the employer's initial selection of that individual, as well as the employer's continued selection of that individual as his representative by continuing him in that capacity. Thus, while the identity of the employer's § 8(b)(1)(B) representative clearly is important to the employer and union restraint and coercion applied directly to the employer to influence the employer's selection of a particular person as his representative clearly violates § 8(b)(1)(B), so too does union restraint or coercion applied indirectly to the employer through discipline of his supervisor which incapacitates that supervisor as an effective grievance adjuster or collective bargainer equally restrain and coerce the employer in the selection of his representative. See *I.B.E.W. Local 641 v. NLRB*, 487 F.2d 1143, 1153-54 (D.C. Cir. 1973).

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* These cases are cited in the Network's Brief at 23 (first footnote).

To illustrate, assume the employer is considering filling a supervisory position with A or B, both of whom have been out of the bargaining unit for some time but have retained some form of union membership. A is very vigilant, strictly adheres to company rules and policies, is hard-nosed when it comes to infractions of company rules and policies, and is expected to be hard-nosed when dealing with the union. Candidate B, on the other hand, is thought by the union to be lax, "soft" and likely easily to be persuaded by the union and to be less severe than A in the enforcement of company rules and policies. To the chagrin of the union, the employer selects A to become supervisor and vests him with collective bargaining and grievance adjusting authority because of the above-described qualities. Supervisor A begins to perform his supervisory duties including grievance adjusting. The union threatens supervisor A with discipline and fines because he is performing his supervisory duties as requested by his employer. Following the threats, supervisor A takes on more of the qualities of B; he begins to become "soft" with the union and lax in the enforcement of company rules and policies. To say that the union has not restrained or coerced the employer in the selection of A because the identity of A remains the same, glosses over what the participants in this employment setting, as well as the Board, know has happened. Supervisor A may remain A, but in reality, as far as the union and the employees are concerned, he is very likely to become B. Clearly, the employer's selection of the § 8(b)(1)(B) representative possessing the qualities desired by the employer has been interfered with. The employer is reasonably likely to be left with a supervisor who has a diminished capacity to function effectively as a grievance adjuster and collective bargainer on the employer's behalf. The union restraint and coercion applied indirectly through the supervisor to the employer has interfered with the employer's selection of

his § 8(b)(1)(B) representative as much as if the union had applied direct restraint and coercion to the employer to select B rather than A.

Thus, to conclude in the instant cases that the Networks were not restrained or coerced in their selection of § 8(b)(1)(B) representatives because the identity of such representatives was not changed during the strike is to engage in a fantasy. The Board, cognizant of the industrial realities of the situation, properly found a violation of § 8(b)(1)(B).

IV.
FLORIDA POWER SHOULD BE LIMITED TO ITS FACTS.*

A. The Narrow Holding In Florida Power Only Permits Union Discipline Of Supervisor-Members Who Are Used By Their Employer As Strikebreakers.

The Guild's assertion that for over twenty years a union's right to discipline through fines *any* of its members was generally accepted as lawful is incorrect. It was not in fact until 1967 that this Court narrowly upheld in a 5-4 decision the legality of disciplinary fines of *employee*-members. See *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967). The advent of union discipline of supervisor-members who perform their supervisory duties is relatively recent as is the notion that such union discipline cannot be proscribed by § 8(b)(1)(B). The unions in *Florida Power* fined only those supervisor-members who performed rank-and-file struck work. The unions involved conceded in the court of appeals that supervisor-members who cross picket lines to perform supervisory duties are immune from union discipline. *I.B.E.W., Local*

* The Networks' argument that *Florida Power* rather than be expanded to fit the instant cases within its narrow holding should instead be overruled is set forth in our opening brief at 37-47.

641 v. NLRB, 487 F.2d 1143, 1157 (D.C. Cir. 1973). In oral argument before this Court in *Florida Power*, the unions again conceded this point:

> "But we are taking the principal position here — and I am certainly willing to argue on that basis — that the board may prohibit under § 8(b)(1)(b) [sic] the imposition of union rules on supervisors when they are functioning as supervisors or as a management agent." Transcript of Proceedings before the Court in Nos. 73-556, 73-795 on April 24, 1974, at p. 29. (Argument of Mr. Laurence J. Cohen, Esq. for Union Respondents.)

In addition, the AFL-CIO appearing as amicus in *Florida Power* argued that union discipline of supervisors who engage in *"strikebreaking"* — that is, the performance of rank-and-file struck work — should be found lawful. Brief for the American Federation of Labor and Congress of Industrial Organizations as Amicus Curiae in *Florida Power, supra*, at pp. 8, 16. (Emphasis supplied.)

From the foregoing and in view of the narrow and precise language used by the majority to state the holding in *Florida Power*, 417 U.S. at 814, it is apparent that the case merely carved out a "rank-and-file struck work" exception to the general notion of the parties to that litigation, as well, we might add, to the notion of unions and employers generally, that employers are entitled to have their supervisors be free from union discipline. While we believe along with the dissent in *Florida Power* that the rank-and-file struck work exception is at odds with the collective bargaining process because the performance of rank-and-file struck work by supervisors is itself part and parcel of collective bargaining, even the exception, if properly applied to the instant cases, requires enforcement of the Board's order herein.

B. An Expansion Of Florida Power Beyond Simply Permitting Union Discipline Of Supervisor-Members Who Perform Rank-And-File Struck Work Would Be Inconsistent With § 14(a) Of The Act.

Section 14(a) of the Act provides that "no employer . . . shall be compelled to deem individuals defined . . . as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining." Were a union lawfully permitted, however, to discipline and fine supervisor-members as they do any other employee-members the effect would be to force employers to treat their supervisors *as* employees by divesting them of that supervisory authority and those duties the exercise of which the union will not permit.

It is submitted that § 14(a) contemplates that an employer is entitled under the Act to expect that he can use a supervisor *as* a supervisor without union interference with the relationship. The legislative history of the 1947 Amendments "compels the conclusion that Congress' dominant purpose in amending §§ 2(3) and 2(11), and enacting § 14(a) was to redress a perceived imbalance in labor-management relationships that was found to arise from putting supervisors in the position of serving two masters with opposed interests." *Beasely v. Food Fair of North Carolina, Inc.*, 416 U.S. 653, 661-662 (1974). Failure to read the Act as providing protection to the employer to use his supervisors in that capacity and as the employer determines, results in compelling the employer to deem his supervisors as employees in violation of § 14(a).

Read in this context, the rank-and-file struck work exception in *Florida Power* becomes more understandable. For if one rejects the notion, as did the *Florida Power* majority, that the performance of rank-and-file struck work by a supervisor is both supervisory work and a

vital part of the collective bargaining process, then a supervisor-member so engaged is performing duties no different than those of a rank-and-file employee. Under these circumstances, however, it may be argued that it is neither the union nor the law's failure to proscribe union interference with the employer-supervisor relationship that results in treating a supervisor as an employee, but rather it is the employer alone who has deemed his own supervisor an employee by having him function as a rank-and-file employee. To the extent that the employer himself treats his supervisor as an employee by requiring him to perform rank-and-file struck work, a corresponding removal of the supervisor's immunity from union discipline seems more consistent with § 14(a).

While the foregoing analysis was not articulated by the Court in *Florida Power*, it was suggested by the court of appeals in that case, 487 F.2d 1143, 1157, and does help explain the Court's narrow holding. The analysis also requires that *Florida Power* not be expanded to permit union discipline of supervisor-members who perform in their supervisory capacities.

C. The Underlying Purpose Of Section 8(b)(1)(B) Is To Assure Employers Of The Loyalty Of Their Grievance Adjusters And Collective Bargainers.

The argument to the effect that after *Florida Power* the loyalty to an employer of a supervisor-member vested with grievance adjusting and collective bargaining authority is irrelevant in a § 8(b)(1)(B) proceeding is without merit. Union discipline of supervisor-members who are vested with grievance adjusting or collective bargaining authority which interferes with, or is likely to interfere with their performance of these functions, thereby impairs the loyalty of such individuals as grievance adjusters and collective bargainers in direct violation of § 8(b)(1)(B).

It is not disputed that even under the broadest reading of *Florida Power,* employers are entitled to the undivided loyalty of their supervisors. How that loyalty is achieved, whether it is by self-help, through unfair labor practice proceedings, or both, will continue to be an issue so long as unions continue to discipline supervisors for the performance of their supervisory duties. It hardly seems likely, however, that Congress' concern with resolving the conflict-of-loyalties problem with respect to supervisors as a class, was not also *a fortiori* a concern with respect to assuring the loyalty of an employer's grievance adjusters and collective bargainers, whether or not they are also supervisors. Indeed, the House Report's discussion of the proposed amendments to the definition of supervisor assumes that it is precisely in the areas of grievance adjusting and collective bargaining where management's need for supervisory loyalty is paramount:

> *"Management, like labor, must have faithful agents.* If we are to produce goods competitively and in such large quantities that many can buy them at low cost, then, just as there are people on labor's side to say what workers want and have a right to expect, there must be in management and loyal to it persons not subject to influence or control of unions, not only to assign people to their work, to see that they keep at their work and do it well, to correct them when they are at fault, *and to settle their complaints and grievances,* but to determine how much work employees should do, *what pay they should receive for it, and to carry on the whole of labor relations."* H. R. Rep. No. 245, 80th Cong., 1st Sess., 16 (1947) (emphasis in text supplied.)

Notwithstanding the admittedly scant specific legislative history about § 8(b)(1)(B), it is the language of the section itself, whether considered alone or in the con-

text of the realities of the collective bargaining process, which evinces a clear congressional purpose that an employer be assured of the undivided loyalty of his grievance adjusters and collective bargainers. The only conceivable reason to protect the employer's § 8(b)(1)(B) right to *select* is to assure to him those individuals who will champion his rights and remain loyal to him. To achieve this loyalty an employer certainly may try to exercise self-help; the act of selection is itself self-help. Given its narrowest possible meaning, however, § 8(b)(1)(B) is also intended to effectuate this purpose.

D. Employers' Self-Help Options To Avoid The Conflict-Of-Loyalties Problem Are Neither Clear Nor Practicable.

If § 8(b)(1)(B) is not a part of the solution to the conflict-of-loyalties problem Congress sought to resolve by the 1947 amendments to the Act, employers wishing to achieve the undivided loyalty of their supervisors must attempt to take the unilateral actions suggested in *Florida Power,* 417 U.S. at 808-09. None of these actions, however, guarantees with any degree of certainty the practical accomplishment of that objective without incurring additional legal risks.

Thus, an employer's right to refuse to hire or promote employee-members as supervisors vested with grievance adjusting or collective bargaining authority is viable only in situations where there are candidates for supervisory positions who either are not members of the union or who can resign such membership. In the instant cases, notwithstanding the Guild's contention that the fact is irrelevant, the Guild would not permit the supervisor-members to resign their Guild membership. In an industry such as the entertainment industry, a substantial percentage of the management comes from the rank-and-file. The

"option" of refusing to hire union members as supervisors is not practicable.

Similarly, the right of an employer to discharge supervisors because of their involvement in union activities or their union membership is limited, as the Court recognized in *Florida Power,* 417 U.S. 808, if such discharges may be found to interfere with, restrain or coerce employees in the exercise of their rights under the Act. If other non-supervisory employees knew or had reason to believe that a supervisor's discharge occurred because of activity which if engaged in by the employees would be protected, thereby engendering in employees a fear of retaliation if they continued to engage in what for them is protected activity, the discharge of the supervisor would be found unlawful and the supervisor reinstated with backpay. See *Alberici-Fruin-Colnon,* 226 N.L.R.B. No. 189, 94 L.R.R.M. 1159 (1976); but cf. *Sibilio's Golden Grill, Inc.,* 227 N.L.R.B. No. 260, 94 L.R.R.M. 1439 (1977). Thus, in the instant cases, had the Networks chosen to discharge supervisor-members for honoring Guild picket lines and striking employee-members knew the reason for such discharges, it is not at all unlikely that the Guild would file unfair labor practice charges on behalf of the discharged supervisor-members seeking their reinstatement with backpay on the theory that said discharges interfered with and restrained the § 7 rights of the striking Guild represented rank-and-file employees.

Finally, the third suggested option for self-help which an employer supposedly has to avoid the conflict-of-loyalties problem is to refuse to engage in collective bargaining with supervisors or any union which purports to represent them. However, it is difficult to perceive how the refusal to bargain with supervisors or with a union about their inclusion or exclusion in a collective bargaining agreement or about their duties and status vis-a-vis other

employees solves or avoids the conflict-of-loyalties problem. It merely keeps it off the bargaining table.

The Guild's contention (Guild's Brief at 33) that protection of supervisors from intra-union discipline can be secured by an employer *through* collective bargaining is directly contrary to the notion that refusing to bargain provides a solution. Moreover, the collective bargaining process similarly fails to present an employer with a workable solution to the conflict-of-loyalties problem should the employer decide to forego his clear § 14(a) right not to bargain with a union about his supervisors. Intra-union discipline of supervisors is not a mandatory subject of bargaining. See *Universal Oil Products Co. v. NLRB,* 445 F.2d 155 (7th Cir. 1971). A union is under no compulsion even to discuss with an employer much less agree to immunize supervisors from intra-union discipline. Thus, the collective bargaining process falls far short of providing the sought after solution.

It is apparent that the self-help options theoretically available to employers to resolve or avoid the conflict-of-loyalties problem are not that clear and do not guarantee to employers the ability to assure to themselves the selection and retention of loyal grievance adjusters and collective bargainers which the legislative history of the 1947 amendments so strongly suggests was Congress' intent. Accordingly, the expansion of *Florida Power* to permit union discipline of supervisor-members who perform only their supervisory duties on the basis of self-help options, which, upon closer examination appear to be more illusory than real, is unwarranted.

CONCLUSION

For the reasons stated in the Networks' opening brief and this reply brief, the judgment of the court of appeals should be reversed and the cases remanded with directions to enforce the Board's order.

Respectfully submitted,

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GORDON E. KRISCHER

Dated: November 23, 1977

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California 90015.

On NOVEMBER 23, 1977 I caused to be served the within

Reply Brief for Petitioners American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc.

IN THE
SUPREME COURT OF THE UNITED STATES

No. 76-1121
AMERICAN BROADCASTING COMPANIES, INC., CBS INC. and NATIONAL BROADCASTING COMPANY, INC.,
Petitioners,
vs.
WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

No. 76-1153
ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,
vs.
WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

No. 76-1162
NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

Via United States Mail on the Following:

J. Albert Woll, Esq. Robert C. Mayer, Esq. Marsha Berzon, Esq. 736 Bowen Building 815 Fifteenth Street, N.W. Washington, D.C. 20005 Attorneys for AFL-CIO	3 copies	Laurence Gold, Esq. 815 Sixteenth Street, N.W. Washington, D.C. Attorneys for AFL-CIO	3 copies
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I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on Nov. 23, 1977 at Los Angeles, California.

James A. Bertotti

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } SS.

Rita Korney

On this 23 day of November, A.D., 1977 before me Rita Korney, a Notary Public in and for said County and State, personally appeared James Bertotti known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that James Bertotti executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal and year in this certificate first above written.

OFFICIAL SEAL
RITA KORNEY
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires December 7, 1980